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the premises in repair. The plaintiff, the child of a neighbor, whom the court assumed to be an invitee, was injured by reason of the disrepair of the tenant's premises. *Held*, that the plaintiff can recover. *Flood v. Pabst Brewing Co.*, 149 N. W. 489 (Wis.).

Apart from an express covenant to repair, a landlord owes no duty either to a tenant or a third party to take care that the demised premises are safe. *Lane v. Cox*, [1897] 1 Q. B. 415; *Mellen v. Morrill*, 126 Mass. 545. Nor does a covenant to repair, as a general rule, render the landlord liable, even to the tenant, for personal injuries resulting from the want of repair. He is not liable in tort because it is a mere nonfeasance, nor in contract because the damages are said to be too remote. *Tuttle v. Gilbert Mfg. Co.*, 145 Mass. 169, 13 N. E. 465; *Dustin v. Curtis*, 74 N. H. 266, 67 Atl. 220; *Schick v. Fleischhauer*, 26 App. Div. 210, 49 N. Y. Supp. 962. Third parties, of course, cannot sue on the contract as such. *Cavalier v. Pope*, [1906] A. C. 428; see *Burdick v. Cheadle*, 26 Oh. St. 393, 397. It is also generally held that strangers cannot recover from the landlord in tort by showing merely a breach of the contract to repair. *Frank v. Mandel*, 76 N. Y. App. Div. 413, 78 N. Y. Supp. 855; see *Shackford v. Coffin*, 95 Me. 69, 49 Atl. 57; *Burdick v. Cheadle*, *supra*. A recent Kentucky case reaches this result. *Dice's Adm'r v. Zweigart's Adm'r*, 171 S. W. 195. Some jurisdictions, however, allow a recovery on the theory of preventing circuity of action. See *Lowell v. Spaulding*, 4 Cush. (Mass.) 277, 279. This view seems to be untenable where the tenant cannot recover in contract from his landlord the damages collected from him by the injured third party, because of the remoteness of the damage. *Schick v. Fleischhauer*, *supra*. Other jurisdictions allow an invitee of the tenant to recover in tort on what is conceived to be an affirmative duty of due care to make the premises safe, arising out of the contract. This is the reasoning of the principal case. *Barron v. Liedloff*, 95 Minn. 474, 104 N. W. 289; *Mesher v. Osborne*, 75 Wash. 439, 134 Pac. 1092. These cases seem unsupportable, since they confuse the liability arising from a breach of a duty imposed by law with a duty assumed by contract. See *Dustin v. Curtis*, 74 N. H. 266, 269, 67 Atl. 220. *Cf. Miles v. Janvrin*, 196 Mass. 431, 82 N. E. 708.

MECHANICS' LIENS — WAIVER OF LIEN BY CONTRACT BETWEEN MATERIALMAN AND CONTRACTOR. — By a written agreement between a materialman and the contractor, the materialman agreed not to assert his right to a mechanics' lien upon a building being erected for the defendant by the contractor. The defendant had paid the contractor more than was proper in view of the claims of materialmen, but did not learn of this agreement until suit was brought by the materialman to enforce his lien. *Held*, that the agreement did not constitute a waiver of the lien. *Massachusetts Bonding & Ins. Co. v. Realty Trust Co.*, 83 S. E. 210 (Ga.).

In the absence of estoppel, the question whether the materialman has waived his right to a lien is one of intention. *Johnson v. Spencer*, 49 Ind. App. 166, 96 N. E. 1041; *Lee v. Hassett*, 39 Mo. App. 67. This may be shown by acts inconsistent with the existence of a lien. *Green v. Fox*, 7 Allen (Mass.) 85. Or the materialman may waive his right by a contract with the owner. *Murray v. Earle*, 13 S. C. 87. But where there is merely a contract between the materialman and the contractor, as in the principal case, the owner is but incidentally benefited, and can take no advantage of the contract. Although there is an intention by the materialman to waive his lien, it would seem that it must run to the owner in order to be binding upon him as a waiver.

NEGLIGENCE — DUTY OF CARE — EFFECT OF VIOLATION OF STATUTE PROHIBITING THE EMPLOYMENT OF MINORS IN ELEVATORS. — The plaintiff's intestate, a boy less than eighteen years old, was allowed to run an elevator in